MALAYAN COMMERCIAL BANKS ASSOCIATION & ANOR.

v.

ASSOCIATION OF BANK OFFICERS, PENINSULAR MALAYSIA & ANOR.

COURT OF APPEAL, KUALA LUMPUR
DATO' N.H. CHAN JCA
DATO' K.C. VOHRAH J
DATUK WIRA HJ. MOHD. NOOR BIN HJ. AHMAD J
[CIVIL APPEAL APPLICATION NO. W-04-2-95]
23 AUGUST 1995

EMPLOYMENT LAW: *Bank employees - Working hours - Whether could be required to work on a rest day - "Essential services" - Whether banking services an "essential service" - Section 60A(2)(f) Employment Act 1955 - Industrial Relations Act 1967 s. 2.*

WORDS & PHRASES: *"Essential services" - Section 2, Industrial Relations Act 1967 - Schedule thereto*

Section 60A(2)(f) of the Employment Act, 1955 *inter alia* stipulates that an employee may be required to work on a rest day provided that such work as is to be performed is "work in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967". In this appeal the core issue that arose was whether, bearing in mind the aforesaid provision, a bank employee could be required by his employer to work on a rest day.

Held:

Per N.H. Chan JCA (delivering the judgment of the Court):

[1] It is plain under the above provision that an employee may be required to work on a rest day where there is work to be performed by him in any essential service as defined in the Industrial Relations Act 1967.

[2] Section 2 of the Industrial Relations Act 1967 gives the definition of "essential service" and says that "essential service" means any service specified in the Schedule. In the Schedule, however, "banking services" are one of the essential services specified. It is therefore quite plain that under said s. 60A(2)(f), a bank employee can be required by his employer to work on a rest day. This is because the work to be performed by a bank employee is an essential service as defined in the Industrial Relations Act.

[Appeal allowed].

***[Bahasa Malaysia** Translation of Headnotes]*

***UNDANG-UNDANG PEKERJAAN:** Pekerja-pekerja Bank - Waktu kerja - Samada boleh dikehendaki bekerja pada hari rehat - "Perkhidmatan penting" - Samada perkhidmatan bank merupakan "perkhidmatan penting" - Seksyen 60A(2)(f) Akta Pekerjaan 1955 - Akta Perhubungan Perindustrian 1967 s. 2.*

***PERKATAAN & ISTILAH:** "Perkhidmatan penting" - Seksyen 2 Akta Perhubungan Perindustrian 1967 - Jadual didalamnya.*

Seksyen 60A(2)(f) Akta Pekerjaan 1955 antara lainnya menentukan bahawa seseorang pekerja boleh dikehendaki bekerja pada hari rehat dengan syarat bahawa kerja yang sedemikian sepertimana ianya harus lakukan adalah "kerja dalam bidang perindustrian yang penting kepada ekonomi Malaysia atau suatu perkhidmatan penting sepertimana yang ditakrifkan dalam Akta Perhubungan Perindustrian 1967". Dalam rayuan ini, isu penting yang berbangkit adalah samada dengan memberi perhatian kepada peruntukkan yang tersebut di atas, seseorang pekerja bank boleh dikehendaki oleh majikannya untuk bekerja pada hari rehat.

Diputuskan:

Per N.H. Chan HMR (menyampaikan penghakiman Mahkamah):

[1] Ianya nyata dibawah peruntukan yang tersebut di atas bahawa seseorang pekerja boleh dikehendaki untuk bekerja pada hari rehat di mana terdapat kerja yang boleh dilakukan olehnya dalam mana-mana perkhidmatan penting sepertimana yang ditakrifkan dalam Akta Perhubungan Perindustrian 1967.

[2] Seksyen 2 Akta Perhubungan Perindustrian 1967 memberikan takrifan bagi "perkhidmatan penting" dan menyatakan bahawa "perkhidmatan penting" bermaksud apa-apa perkhidmatan yang ditentukan dalam Jadual tersebut. Dalam Jadual itu, "perkhidmatan bank" adalah salah satu perkhidmatan penting yang ditentukan. Ianya dengan itu agak jelas bahawa di bawah s. 60A(2)(f) itu, seseorang pekerja bank boleh dikehendaki bekerja oleh majikannya pada hari rehat. Ini adalah kerana kerja yang harus dilakukan oleh seorang pekerja bank adalah perkhidmatan penting sepertimana yang ditakrifkan dalam Akta Perhubungan Perindustrian.

[Rayuan dibenarkan].

Legislation referred to:
Employment Act 1955, s. 60A(2)(f)
Industrial Relations Act 1967, s. 2

For the appellants - Andrew Saw (Mazlinda Makhzan with him) M/s. Ng Yook Woon, T.C Saw & Co.
For the respondents - Anand Ponnudurai, M/s. Lobo & Assocs.

JUDGMENT

N.H. Chan JCA:

This appeal involves only one question of law. It is this, whether a bank employee could be required by his employer to work on a rest day. Section 60A(2)(f) of the Employment Act, 1955 reads as follows:

> 60A(2) **An employee may be required by his employer** to exceed the limit of hours prescribed in subsection (1) and **to work on a rest day, in the case of -**
>
> (f) **work to be performed by employees** in any industrial undertaking essential to the economy of Malaysia or **any essential service as defined in the Industrial Relations Act 1967:** (we have supplied the emphasis)

It is plain under the above provision that an employee may be required to work on a rest day where there is work to be performed by him in any essential service as defined in the Industrial Relations Act 1967. Section 2 of the Industrial Relations Act 1967 gives the definition of "essential service". It says:

> 2. In this Act, unless the context otherwise requires -
>
> 'essential service' means any service specified in the Schedule;

In the schedule, "banking services" are one of the essential services specified, thus:

> SCHEDULE
> ESSENTIAL SERVICES
> (Section 2)
>
> 1. **Banking services** (emphasis supplied).
> 2. Electricity services.
> 3. Fire services.
> 4. Port, dock, harbour and airport services and undertakings, including stevedoring, lighterage, cargo handling, pilotage and storing or bulking of commodities.
> 5. Postal services.
> 6. Prison services.
> 7. Production, refining, storage, supply and distribution of fuel and lubricants.
> 8. Public health services.
> 9. Radio communication services, including broadcasting and television services.

10. Telegraph, telephone and telecommunication services.

11. Transport services by land, water or air.

12. Water services.

13. Any service provided by any of the following Departments of Government.

(i) Chemistry.

(ii) Civil Aviation.

(iii) Customs and Excise.

(iv) Immigration.

(v) Marine.

(vi) Meteorology.

(vii) Printing.

14. Services which are connected with, or related to, or which assist towards, the maintenance and functioning of the armed forces and the Royal Malaysian Police Force.

15. Business and Industries which are connected with the defence and security of Malaysia.

16. Any section of any service, on the working of which the safety of the employees therein or of the establishment relating thereto depends.

17. Industries declared by the Minister by notification in the Gazette as industries essential to the economy of Malaysia.

We have allowed the appeal as it is quite plain to us that under s. 60A(2)(f) of the Employment Act, a bank employee can be required by his employer to work on a rest day. This is because the work to be performed by a bank employee is an essential service as defined in the Industrial Relations Act.